
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

WINFRED M. GREEN,

Petitioner,

versus

WARDEN RIVERA,

Respondent.

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CIVIL ACTION NO. 1:12-CV-530

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE
MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION**

Petitioner, Winfred M. Green, a federal prisoner currently confined at FCI Beaumont Low, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The Court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends granting the respondent’s motion for summary judgment for failure to exhaust administrative remedies and dismissing the petition.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. Petitioner filed objections to the Magistrate Judge’s Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b).

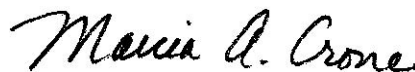
After careful consideration, the Court finds petitioner’s objections are without merit. Having claimed futility, petitioner bears the burden of showing extraordinary circumstances that

would warrant waiver of the exhaustion requirement. *See Mayberry v. Pettiford*, 74 F. App'x 299, 299 (5th Cir. 2003). As justification for waiver of the exhaustion requirement, petitioner argues that if he had attempted to file a grievance complaining he never received the DHO report, the BOP would simply deny the grievance as an out of time appeal. Offered without any support, such bald allegations cannot suffice to establish the requisite extraordinary circumstances. Furthermore, summary judgment evidence establishes petitioner has never filed any grievance relating to this disciplinary conviction, or any other matter, and thus has never even attempted to avail himself of the grievance process. Petitioner has failed to establish that the futility exception should apply in this case in order to excuse his failure to exhaust. This petition, therefore, should be dismissed.

ORDER

Accordingly, the objections of the petitioner are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

SIGNED at Sherman, Texas, this 1st day of May, 2013.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE